

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
JOHN BARMETTLER, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
SPOKANE COUNTY AIR POLLUTION )  
CONTROL AUTHORITY, )  
 )  
Respondent. )

PCHB No. 353

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$25.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at a hearing in the Spokane County Public Works Building, Spokane, at 11:00 a.m., August 15, 1973.

Appellant appeared pro se and was assisted by his Daughter, Mrs. M. H. Kralik. Respondent appeared through its Director, Fred A. Shiosaki, assisted by James Emacio, Deputy Prosecuting Attorney of Spokane County. Osmund Miller, Spokane court reporter, recorded the

1 proceedings.

2       Witness were sworn and testified. Exhibits were admitted. From  
3 testimony heard, exhibits examined and transcript reviewed, the Pollution  
4 Control Hearings Board makes these

5                               FINDINGS OF FACT

6                               I.

7       Appellant, who resides in a house owned by a Daughter, Mary Rentel,  
8 at North 1425 University, Spokane, Spokane County, is 83 years old. He  
9 has a crippling ailment in both legs and is confined mostly to the  
10 interior of his residence which is maintained by a housekeeper employed  
11 by him. In the legal meaning of the word, appellant "controls" the  
12 property.

13                              II.

14       On April 6, 7 and 8, 1973, being, respectively, a Friday, Saturday  
15 and Sunday, residents of Spokane County were permitted by public notice  
16 of respondent to have household vegetation open fires. However, this  
17 weekend "burn" did not include the next day, Monday, April 9, 1973.

18                              III.

19       At about 6:30 p.m. on April 9, 1973 a small (less than two feet in  
20 diameter) open fire of lawn trimmings burned at the edge of a driveway  
21 at North 1425 University, Spokane, Spokane County. The fire, not ignited  
22 or ordered by appellant or of his knowledge, was observed by respondent's  
23 director who was rebuffed at the front door of the residence by appellant  
24 when respondent's director went there to ask that the fire be extinguished.

25                              IV.

26       Section 6.01(5)(b) of respondent's Regulation I permits outdoor

27 FINDINGS OF FACT

CONCLUSIONS AND ORDER

household vegetation fires only during periods designated by respondent. Section 6.01(B) of respondent's Regulation I states that a person who "controls" property where a prohibited open fire is burned shall be considered to have caused or allowed said fire.

V.

As a result of the observed fire on April 9, 1973, respondent served a Notice of Violation on appellant, citing Section 6.01 of respondent's Regulation I and invoking a civil penalty of \$25.00, the subject of this appeal. The \$25.00 civil penalty is one tenth the maximum allowable amount which respondent could have invoked (Section 2.11(C) of respondent's Regulation I).

From these Findings of Fact, the Pollution Control Hearings Board comes to these

CONCLUSIONS

I.

A small household vegetation open fire on a day when such blazes were not authorized by respondent did burn on property "controlled" by appellant. Although appellant did not start or commission the fire and had no knowledge of it, he nevertheless must be held in technical violation of Section 6.01 of respondent's Regulation I because he "controls" the property on which the illegal fire burned. It also must be concluded that the civil penalty, only a fraction of the allowable maximum, is reasonable.

II.

Appellant may not have been wise to have shut the door in the face of respondent's director whose original mission was only to ask that the

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 fire be extinguished. But appellant is an honorable man who did not  
2 intentionally violate respondent's Regulation I.

3 THEREFORE, the Pollution Control Hearings Board makes this

4 ORDER

5 The appeal is denied, but the \$25.00 civil penalty is suspended  
6 upon condition that appellant does not violate respondent's Regulation  
7 I for a period of six months from the date of this Order.

8 DONE at Lacey, Washington this 27<sup>th</sup> day of September, 1973.

9 POLLUTION CONTROL HEARINGS BOARD

10 *Walt Woodward*

11 WALT WOODWARD, Chairman

12 *W. A. Gissberg*

13 W. A. GISSBERG, Member

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27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER